

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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WASHINGTON, DC 20515-6301

(202) 225-6371
www.science.house.gov

March 6, 2013

The Honorable Bob Perciasepe
Acting Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Mr. Perciasepe,

On November 29, 2012, Subcommittee on Oversight Chairman Paul Broun wrote former U.S. Environmental Protection Agency (EPA) Administrator Lisa Jackson¹ with several questions about EPA's draft Bristol Bay Watershed Assessment (DBBWA), as well as the final External Peer Review Report on the DBBWA released on November 9, 2012. While the Committee appreciated Associate Administrator Arvin Ganesan's response of December 7, 2012, (Attachment A), he did not provide some of the information requested, and he neglected to answer all of the questions.

Mr. Ganesan did, however, provide the following assurance regarding EPA's next steps in this DBBWA process:

"The schedule, scope, related contracts, charge and methodology of this additional review are still undetermined but the Agency will certainly keep the committee apprised as these decisions are made." (Attachment A).

In light of this affirmation, we were surprised to learn through recent media reports that EPA is expected to:

"release a new version of the watershed assessment later this year and reconvene the same scientists to give it another look. The agency will also open another public comment period."²

It is disappointing that EPA officials were unable to follow up on a simple promise to provide information to a Member of this Committee on this issue. As a result, we now write you

¹ Letter from Rep. Paul Broun, Chairman, to Ms. Lisa Jackson, EPA Administrator, November 29, 2012, available at: <http://science.house.gov/sites/republicans.science.house.gov/files/documents/2012%2011%2029%20DPB%20to%20EPA%20re%20Bristol%20Bay%20Watershed%20Assessment.pdf>

² Manuel Quinones, "Bristol Bay - EPA to Revise Watershed Assessment, Allow More Public Comment," *E&E News (Greenwire)*, February 6, 2013, available at: <http://www.eenews.net/Greenwire/2013/02/06/12>

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to request a staff briefing on the External Peer Review Report of the DBBWA, and details about the “schedule, scope, related contracts, charge and methodology of this additional review.” Further, in preparation for the briefing, we expect your staff to be able to provide the information requested below. These items have been previously requested of EPA staff, but have either been unanswered, or the responses have been insufficient:

- 1) How much money has EPA spent so far on the draft Bristol Bay watershed assessment? How much more does it plan to spend on the final assessment? The reply to these questions should include all costs EPA incurred, and expects to incur, related to the drafting of the Bristol Bay watershed assessment, the initial peer review, the follow-on peer review, as well as any other costs related to the watershed assessment.
- 2) Please provide a list of EPA staff that worked on and were involved in any way with the DBBWA.
- 3) Please provide a list of similar watershed assessments conducted by EPA on potential mining areas in advance of a mining permit application being filed. As part of this request, please provide the exact authority under which they were conducted, their costs, how long they took, and public comment details such as the length of the comment period and whether EPA responded to them. *[Note: EPA staff provided a list of other watershed assessments, but the request, as stated above, was for assessments conducted under a specific set of circumstances. EPA also failed to provide information associated with the assessments as specified above, which include costs, public comment details etc.]*
- 4) Please clarify how the DBBWA qualifies as, in the words of EPA Science Advisor Glenn Paulson, “a good example of EPA’s sustainable approach?”³
 - a. What steps has EPA taken to implement the National Academy of Sciences report, *Sustainability and the U.S. EPA*, in developing and disseminating this assessment?

Finally, please provide all records (as defined in Attachment B), related to the DBBWA and its associated peer review reports. Your search and document production should include all federal and non-government records, including records associated with any duplicate or alias e-mail addresses for any federal employees, such as the “Richard Windsor” account used by the former EPA Administrator.

³ Jenny Hopkinson, “EPA Sees Alaska Study As ‘Example’ of Sustainable Approach,” *Inside EPA*, June 6, 2012, available at: <http://insideepa.com/Inside-EPA/Inside-EPA-06/08/2012/epa-sees-alaska-watershed-study-as-example-of-sustainable-approach/menu-id-153.html>.

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Please ensure that you provide all documents by April 3, 2013. Additionally, please ensure that a mutually convenient time for scheduling the staff briefing between EPA staff and Committee staff is also identified by April 3, 2013.

If you are unable to meet these deadlines, please respond to this letter by March 20, 2013, with your explanation as to why this briefing and the documents requested cannot be provided in the one-month time-frame offered.

We are deeply concerned by EPA's rationale for conducting the draft watershed assessment, particularly when a rigorous process for regulating mining, including numerous state and federal agencies, already exists. By initiating the BBWA, it appears as though EPA is selectively using its authority to conduct scientific assessments to create new regulatory burdens. This regulatory reach is even more troubling when one considers that the entire assessment is based on a hypothetical mine. This is a dangerous message to send during these especially trying fiscal times, with the Sequester looming over Americans, and jobs a rare commodity.

Your cooperation in providing us the requested documents and briefing will go a long way toward assisting the Committee in its oversight responsibilities. Should you have any questions about this request, please feel free to have the agency's staff contact Raj Bharwani with the Oversight Subcommittee at (202) 225-6371. Thank you for your prompt attention to this matter.



Rep. Lamar S. Smith
Chairman
Committee on Science, Space,
and Technology

Sincerely,



Rep. Paul Broun, M.D.
Chairman
Subcommittee on Oversight

cc:

Rep. Eddie Bernice Johnson
Ranking Member
Committee on Science, Space,
and Technology

Rep. Dan Maffei
Ranking Member
Subcommittee on Oversight

Attachments



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 37 2012

OFFICE OF CONGRESSIONAL
AND INTERGOVERNMENTAL RELATIONS

The Honorable Paul Broun, MD
Chairman
Subcommittee on Investigations and Oversight
Committee on Science, Space, and Technology
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your November 29, 2012, letter to the U.S. Environmental Protection Agency (EPA) Administrator Lisa P. Jackson regarding the agency's development of "An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska." Your letter focuses on the final peer review report on the agency's draft Assessment, prepared by 12 independent experts, and the EPA's next steps. I am pleased to provide this response to your letter.

The EPA began the Bristol Bay watershed assessment in response to requests from federally-recognized tribal governments and other organizations in Alaska and elsewhere, who raised significant concerns about potential environmental, water quality, fisheries, and associated economic and subsistence impacts from proposed large scale mining development in the watershed. The EPA is working hard to ensure that we develop an effective, timely and transparent assessment of the significant resources of Bristol Bay. As a key aspect of this process, we convened a panel of 12 independent experts to conduct a peer review of the EPA's draft Assessment and respond to 14 charge questions. During a November 9, 2012 briefing for your staff, the EPA provided the committee with copies of the draft Assessment and the Final Peer Review Report, and responded to questions from committee and member staff.

The Final Peer Review Report, posted on the EPA's website, includes feedback from the 12 peer reviewers on each of the charge questions. The reviewers provided individual perspectives on the quality of EPA's assessment and included recommendations on how the assessment could be improved. The EPA will carefully consider these comments and suggestions as we work to revise and improve the draft Bristol Bay Assessment.

Based on the expert comments, and the EPA's commitment to fully address them, the agency has decided to convene a group of qualified experts to review the revised draft Assessment in light of the issues raised by the peer reviewers. The schedule, scope, related

contracts, charge and methodology of this additional review are still undetermined but the Agency will certainly keep the committee apprised as these decisions are made.

The final Bristol Bay Assessment will reflect this further expert review and be accompanied by the EPA's point-by-point response to the peer reviewers' comments as well as public comments. These response documents will be available when the final Bristol Bay Assessment is released. The Agency does not have a timeline for the completion of the assessment.

Thank you again for your letter. If you have further questions, please contact me or your staff may call Denis Borum in my office at (202) 564-4836.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Arvin Ganesan', written in a cursive style.

Arvin Ganesan
Associate Administrator

cc: The Honorable Paul Tonko
Ranking Member

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," "relate," or "regarding" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.